

University of California, Hastings College of the Law
UC Hastings Scholarship Repository

Center for Negotiation and Dispute Resolution

Departments, Centers & Programs

Spring 4-2015

Communique (Spring 2015)

UC Hastings Center for Negotiation and Dispute Resolution

Follow this and additional works at: <https://repository.uchastings.edu/cndr>

Recommended Citation

UC Hastings Center for Negotiation and Dispute Resolution, "Communique (Spring 2015)" (2015). *Center for Negotiation and Dispute Resolution*. 11.
<https://repository.uchastings.edu/cndr/11>

This Book is brought to you for free and open access by the Departments, Centers & Programs at UC Hastings Scholarship Repository. It has been accepted for inclusion in Center for Negotiation and Dispute Resolution by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact wangangela@uchastings.edu.

UC HASTINGS CENTER FOR NEGOTIATION AND DISPUTE RESOLUTION

COMMUNIQUE

SPRING 2015

IN THIS ISSUE

ADR Team Global Winners
International Court ADR Institute
NorCal ADR Faculty Conference
Faculty Spotlight
Silicon Valley Foundation
Asia-Pacific International Mediation Summit
March Madness
Q+A with Court Mediator Mattie Robertson '10
ADR in Hong Kong

Flowers are blossoming, the sun is shining, and we share with you this edition of *Communique*. Along with informing you of our recent adventures, we will alert you to exciting opportunities coming in the near future.

We hope you enjoy.

Questions, comments and contributions are always welcome; just email us at cnldr@uchastings.edu.



Happy Spring!

Sheila Purcell
Clinical Professor &
Director, UC Hastings CNDR

HAPPY SPRING!

SPRING INTO ACTION!

UPCOMING EVENTS

Advanced Mediation Training

May 9, 16, & 30, 2015

[uchastings.webconnex.com/
advancedmediation](http://uchastings.webconnex.com/advancedmediation)

Mastering the Fundamentals of Mediation

June 10 - 12 & 15 -16, 2015

[uchastings.webconnex.com/
2015mediation](http://uchastings.webconnex.com/2015mediation)

Conflict Engagement in Complex Systems

July 9, 11, 23, 25 & August 6, 2015

[uchastings.webconnex.com/
summerconflict](http://uchastings.webconnex.com/summerconflict)

International Court ADR Institute

August 10 - 15, 2015 (NEW DATES!)

uchastings.webconnex.com/II

ENJOY PROGRAMS AND COURSES OFFERED THIS SPRING AND SUMMER.

Don't just sit there, spring into action and take advantage of the several offerings by CNDR. With courses, workshops, and the summer **International Court ADR Institute**, CNDR provides plenty of opportunities for you to grow your skills in ADR.

SPOTLIGHT:

ADVANCED MEDIATION AND CONFLICT RESOLUTION PRACTICE

This thought provoking course, taught by *Teresa Carey*, will offer participants the opportunity to hone their skills in dispute resolution. Participants will have ample opportunity to put what they learn into practice by working through real world cases with personalized coaching, debrief and discussion.

MASTERING THE FUNDAMENTALS OF MEDIATION

This comprehensive mediation training, taught by *Jessica Notini*, provides a unique blend of mediation theory, hands-on mediation skills training and an exploration of the sensibilities and personal qualities required to be an effective mediator. We welcome those with no previous mediation training or experience, as well as experienced mediators who wish to enhance their effectiveness.

CONFLICT ENGAGEMENT IN COMPLEX SYSTEMS

This new course offering is an interactive, professional development course, taught by *Debra Geradi*, which incorporates theory with practice with an emphasis on expanded awareness of "self-in-conflict" and "self-in-systems" as a means of developing a foundation for conflict engagement in complex systems.

INTERNATIONAL COURT ADR INSTITUTE (NEW DATES!)

For three years CNDR has offered an internationally groundbreaking and unique course on how to launch and maintain Court ADR programs. Judges, lawyers and mediators from a diverse range of 25 countries have come to learn and share experiences and have gone home to implement new programs or to expand and improve existing ADR services.

GLOBAL WINNERS



DES MOINES, IOWA

UC Hastings turned in a dominant performance at the **2015 INADR Law School Mediation Championships** in Des Moines, Iowa. 2Is *Whitney Geitz*, *Danielle Chang*, and *Sara Fay Katz* (L to R, Front in the picture) finished 4th Place in Mediation and 5th Place in Advocacy, while 2Ls *Hooman Yavi*, *Jon Kam*, and *Jon Tong* (L to R, back row) finished 3rd Place in Advocacy and 10th Place in Mediation. With all four Hastings Teams placing in the Top 10 in both disciplines at a major international tournament, Hastings again showed the most diversity and breadth of talent and dominated the awards ceremony.



LYNCHBURG, VIRGINIA

For 3 consecutive years and in 4 out of the last 7 years, UC Hastings has won the **Liberty University National Negotiation Competition**. Congratulations to 3L *Kevin Morrissey* and 1L *Penney Azeezee* for winning 1st place this year! *Justin Schultz* & *Ida Khamsi* narrowly missed the Finals in a three-way tie.



PARIS, FRANCE

Congratulations to (L to R) *Brian Lowry*, *Sarah Barr*, *Brigid Fogarty*, and *Pat Thacher* for advancing to the semifinals in the prestigious **International Chamber of Commerce Mediation Competition** at ICC Headquarters in Paris, France. With 67 teams competing from 35 countries and over 500 participants, UC Hastings has, for the 7th time in 10 years, advanced to the final rounds.



LONDON, ENGLAND

Congratulations to (L to R) *Vikas Srinath*, *Kyle Bonacum*, and *Ida Khamsi* as semifinalists at the 2015 **International Academy of Dispute Resolution International Mediation Tournament**. Kyle and Ida additionally finished in 2nd place of 264 entrants for their Advocacy performance in the tournament!

MANY THANKS TO EVERYONE WHO HELPED COACH, SPAR AND CHEER THE TEAM TO VICTORY!

CONGRATULATIONS ADR TEAM FOR A GREAT SEMESTER!

**NEW
DATES!**
AUGUST 10 - 14

INTERNATIONAL COURT ADR INSTITUTE

ENVISIONING, DESIGNING & IMPLEMENTING COURT ADR: A PRACTICAL & THEORETICAL PROGRAM

SAN FRANCISCO, USA | AUGUST 10 - 14, 2015

This program, open to non-U.S. judges, attorneys and court administrators, will prepare participants to design and implement court ADR programs in their respective countries. Participants will be selected from a pool of international applicants and will receive a certificate of completion at the end of the week-long program. Instruction will involve a mixture of theoretical and practical classroom presentations and simulation exercises, as well as opportunities to observe selected court ADR programs in the immediate vicinity of the law school and to meet with ADR judges, practitioners, and scholars from the community. Participants will learn how to lay the groundwork for a successful court-based ADR program by working with local stakeholders; how to assess community needs, choose ADR processes suited to those needs and develop the chosen program design; how to screen and select cases appropriate for ADR; and how to implement, evaluate and modify a program once it is underway.

This program was offered for the first time in June 2011. Participants were uniformly enthusiastic about the substantive value of the program and about the many opportunities provided to meet and talk with others in the San Francisco Bay Area ADR community. A sample of their comments include:

"THE COMMITMENT OF THE PARTICIPANTS AND THE FACULTY... WAS POWERFUL AND BROUGHT US INSIGHT, KNOWLEDGE, MANY IDEAS AND HIDDEN EXPERIENCE (WISDOM). IT WAS REALLY AN INSPIRING AND ENRICHING WEEK."

"VERY RICH DIVERSITY OF PARTICIPANTS. VERY OPEN-MINDED FACULTY MEMBERS/TRAINERS."

"OVERALL, THIS WAS AN EXCELLENT PROGRAM, BOTH ON A THEORETICAL AND PRACTICAL LEVEL."

PROGRAM FACULTY

The program is designed and taught primarily by *Claudia Bernard*'86 (left), Chief Circuit Mediator for the United States Court of Appeals for the Ninth Circuit; *Howard Herman*'83 (middle), Director of ADR Programs for the United States District Court for the Northern District of California; and *Sheila Purcell*'86 (right), Director of the Center for Negotiation and Dispute Resolution at UC Hastings, and former ADR Director for the Superior Court for the County of San Mateo, California. The three instructors are among the most experienced court ADR program administrators in the United States, as well as being gifted and experienced teachers in the ADR field, both in the United States and around the world.



FOR MORE INFORMATION AND TO APPLY VISIT:
[HTTP://CNDR.UCHASTINGS.EDU/PROFESSIONALS/II.PHP](http://cndr.uchastings.edu/professionals/ii.php)

ADR FACULTY SHARE BEST PRACTICES AT ANNUAL CONFERENCE

On February 28, ADR faculty from across Northern California gathered to present and discuss best teaching practices, current trends, and innovations in ADR education. Conference presenters shared knowledge on a wide-range of topics stemming from their own research and practices.

Yishai Boyarin (UC Hastings) presented on **Transformative Mediation** in the context of clinical work with students and techniques for teaching the importance of listening and being non-directive in the context of mediation. *Timothy M. Dayonot (UC Berkeley)* shared the instructional method of **High-Tech Videotaping of Student Negotiations** using the recording capabilities of smartphones and the storage capabilities of cloud computing. *Jessica Notini (UC Berkeley and UC Hastings Adjunct)* explored new research and findings in the field of persuasion presented in **The Small B!g: Small Changes that Spark BIG Influence**, by Martin, Goldstein and Cialdini. *Debra Geradi (affiliated with UC Hastings)* used **Applied Improvisation to Shift & Expand Perspective in Negotiation and Conflict Resolution** by accessing intuitive and generative ways of knowing. *David Johnson (Stanford)* discussed the state of the world in online platforms and lessons learned from **Creating a Negotiation MOOC**.



Timothy M. Davonot



Jessica Notini

The presentations were engaging, sparking conversation and discussion throughout the conference. The event was co-sponsored by UC Hastings Center for Negotiation and Dispute Resolution and Stanford Law School's Gould Negotiation and Mediation Program. The Northern California ADR Faculty Conference is an annual event open to all ADR faculty.

FACULTY SPOTLIGHT



CAROL IZUMI

The Conference of Asian Pacific American Law Faculty (CAPALF) presented the 2014 -2015 Chris K. Iijima Teacher and Mentor Award to Clinical Professor *Carol Izumi* "in recognition of the impact she has had on the many students and legal educators she has mentored and

supported, and her extensive contributions to public service, teaching, and scholarship advancing Asian American rights and in other areas."

Carol was also invited to serve on the Executive Committee of the Association of American Law Schools Section on ADR. Carol previously served on the Section's Executive Committee from 1995-1999 and was elected Chair in 1996. We applaud Carol's countless contributions.



HOWARD HERMAN

Congratulations to long time Adjunct Professor *Howard Herman*, on his appointment as 2015 - 2016 Chair-Elect of the ABA Section of Dispute Resolution. The ABA Section of Dispute Resolution is the largest dispute resolution organization

in the United States and is the home of many projects, including the Legal Educators Colloquium, an important gathering of dispute resolution faculty that meets each spring at the Section's annual meeting.

SILICON VALLEY FOUNDATION

Many thanks to the **Silicon Valley Foundation** for donating to the **International Court ADR Institute**! Their donation will aid in providing a significant experience to judges, mediators, and lawyers worldwide interested in implementing or improving court ADR programs in their home country.

To learn more about the program, please visit <https://cndr.uchastings.edu/professionals/ii.php>. **We encourage you to share the program information with your international contacts.** Thank you for helping us keep the Rule of Law and ADR growing and flourishing worldwide!



Courtesy of UC Hastings' Communications & Public Affairs Office

PROFESSOR PURCELL SHARES MEDIATION EXPERTISE AT INDIAN CONFERENCE



Sheila Purcell, Director and Clinical Professor of UC Hastings' Center for Negotiation and Dispute Resolution, recently helped organize the inaugural ABA Asia-Pacific International Mediation Summit in New Delhi, India, co-sponsored by UC Hastings. In attendance were 220 diverse and enthusiastic mediation professionals representing 18 countries. "The purpose of the summit was to promote and expand the sharing of information between ABA dispute resolution practitioners and India as well as nations throughout the Asia-Pacific region that are trying to jumpstart mediation in their countries," said Purcell.



Sheila Purcell, João Ribeiro, Geetha Ravindra, Secretary of Justice HK Rimsky Yuan, SC, UNCTRAL Dir. Renaud Sorieul, & Sriram Panchu

After an opening plenary session focused on India, the remainder of the conference highlighted mediation efforts in other countries and featured U.N. delegates, ministers of justice, chief justices, academics, policy experts and practitioners. Panels addressed the future of mediation in Asia, best

practices in court and community mediation programs, and training in advanced mediation skills. Professor Purcell moderated a panel on cross-border mediation, which focused on the movement to develop "rules of the road" for mediated agreements in the context of international business transactions.

According to Professor Purcell, it was enlightening to hear about the progress other countries have made with their mediation programs. "The strategic and thorough efforts Hong Kong and Singapore have made to incorporate mediation and ADR into almost every aspect of their legal culture are impressive," said Purcell. "To watch these countries that once came to the U.S. to learn about mediation and see them take off and in some instances, surpass us, as far as level of activity, government support and funding, is both bittersweet and exciting."

In India, mediation is a bright spot in an overwhelmed court system. "The courts are drowning under enormous caseloads, with waits of up to ten years until trial. Mediation is saving the day. They're literally mediating hundreds of thousands of cases in court and community settings," said Purcell, who had the opportunity to visit one of the nine community mediation centers in New Delhi. "San Francisco has one community mediation program and even though San Francisco is a much smaller city, the comparison blew my mind. The center I visited had 600 lawyers willing to volunteer and only 20 were selected, which illustrates the level of interest in the Indian legal community in supporting mediation," recounted Purcell.

During her stay in India she also conducted, along with *Howard Herman* and *Claudia Bernard*, an all-day training session in

Bangalore for court mediators, judges and administrators from four Indian states, which focused on mediator quality and ethical issues. This was organized by the **Foundation**



Sheila with Court ADR Mediator from Bangalore training

for Sustainable Rule of Law Initiatives.

With the successful summit now in the rearview mirror, the organizers plan to identify capacity-building projects in Nepal and other smaller Asian countries. Trainings may be offered in those countries, or selected representatives may attend the **UC Hastings' Center for Negotiation and Dispute Resolution annual International Court ADR Institute**, coming up in August 2015.



ABA ADR Section Chair, Geetha Ravindra & Chief Justice of Singapore, Sundaresh Menon



Laila Ollipally, Sheila Purcell & Court ADR Leaders from 4 states in India

MARCH MADNESS

SHANGHAI ADR CENTER DIRECTOR VISITS CNDR



Clint Waasted, Sheila Purcell, Carrie Shu Shang, & Carol Izumi

Carrie Shu Shang, Assistant Professor and Executive Director of the SUFE Free Trade and ADR Research & Development Center at **Shanghai University of Finance and Economics School of Law** visited CNDR on March 3, 2015. Her school is one of the oldest and most prestigious economics programs in China and they have recently launched an ADR Center so Carrie was interested in learning about CNDR's many components.

SAN MATEO COURT SITE VISIT FOR JUDGE KIM OF SOUTH KOREA



Judge Yoon Hee Kim & Judge Stephen Dylina

UC Hastings Visiting Scholar, *Judge Yoon Hee Kim* accompanied CNDR Director Sheila Purcell on a site visit with settlement and ADR Judge extraordinaire, *Judge Stephen Dylina*, and ADR staff members *Monica Rands-Pruess* and *Michelle Cesario* at the **San Mateo Superior Court** ADR program on March 13, 2015. Sheila designed and directed 8 court ADR programs in San Mateo from 1996-2012. Views on how to incorporate ADR into courts and how to educate litigants to consider mediation were exchanged. Thank you to Judge Dylina and the Court staff for this unique opportunity!

VOLUNTARY MEDIATOR CREDENTIALING

On March 16, 2015 a roundtable discussion was hosted by the **Southern California Mediation Association Ad Hoc Committee on Voluntary Mediator Credentialing** in collaboration with UC Hastings Center for Negotiation and Dispute Resolution. The roundtable was attended by mediator professionals from across California and those affiliated with the field interested in exploring the pros and cons of credentialing. *Jack Goetz* and *Barbara Brown* led the discussion and heard a range of views on the concept being explored by SCMA.



CNDR IS SHAPING THE FUTURE OF DISPUTE RESOLUTION AND WE INVITE YOU TO JOIN US!

Help support programs and initiatives such as our award winning ADR Team and the International Court ADR Institute.

If you would like to donate by check, please make it payable to UC Hastings CNDR and mail it to CNDR, UC Hastings College of the Law, 100 McAllister St., Suite 408, San Francisco, CA 94102.



DONATE TODAY!

<https://uchastings24024.thankyou4caring.org/cndr>

Courtesy of UC Hastings' Communications & Public Affairs Office

How the UC Hastings Mediation Clinic prepared her to manage the Court Mediation Program for the nonprofit SEEDS Community Resolution Center in Oakland.



“While at Hastings, I took various Alternative Dispute Resolution courses that led me to mediation; in particular, the Mediation Clinic. Through the Clinic I discovered my passion for mediation, and realized a place to apply my talents. The collaborative nature of mediation appealed to me greatly, and fulfilled my desire to work directly with individuals and bring positive change to the community.”

Q: Tell us about your current position.

A: I manage the Court Mediation Program for the nonprofit SEEDS Community Resolution Center; the program is one of SEEDS various conflict resolution services. As Program Manager, I supervise and mentor a team of volunteer mediators who provide same-day-as-hearing mediations for litigants in the Alameda County Superior Courts. We work in Small Claims, Civil Harassment, and Collections courts, facilitating dialogue supporting individuals to resolve their conflicts using effective communication, and interest-based negotiation. It's wonderful because people can craft personalized agreements through mediation that better meet their needs than traditional court-ordered judgments. I work closely with Judges and other court personnel to ensure that SEEDS' services meet the needs of the community and the courts. I also oversee the Court Mediation Practicum, training student mediators who work alongside the volunteers, and me, getting hands-on mediation experience with litigants in Small Claims Court.

Q: How did your time at UC Hastings prepare you for your career?

A: While at Hastings, I took various Alternative Dispute Resolution courses that led me to mediation; in particular, the Mediation Clinic. Through the Clinic I discovered my passion for mediation, and realized a place to apply my talents. The collaborative nature of mediation appealed to me greatly, and fulfilled my desire to work directly with individuals and bring positive change to the community. Because I excelled in the Clinical Program, I sought a way to continue mediating, leading me to an externship placement at SEEDS during my last semester at Hastings. My professors were hugely supportive, and I continue to partner with some of them today.

Q: Why did you decide to go into law in the first place?

A: I always knew I wanted to continue my education after college, and law school seemed a natural fit for me. I have always been able to argue both sides of a disagreement; although, whether I choose to is another story. I also love to delve into the details and background of a conflict to find what is at the core of the issues for the people involved.

Q: What is your greatest professional accomplishment so far?

A: Sharing with others the ability to effectively resolve conflict. Helping people to restore broken relationships through mediation is extremely rewarding. To this end, I've mediated over 150 cases and counting, taught many classes on conflict, and mentored numerous mediators over the last five years. Cultivating the ability to see conflict as an opportunity is a great asset to our community; conflict is inevitable, so why not embrace it as an opportunity for growth? Sharing this message is a personal and professional goal.

Q: Can you tell us about one of your most interesting cases?

A: In a landlord-tenant mediation, I discovered the parties used to be best friends. The defendant's inability to pay rent had led to a breakdown of the friendship, and brought them to court. Both parties were devastated at the lost relationship, and through the mediation process they were able to begin restoring their friendship - which was the main interest for both. Their agreement included acknowledgements of past behavior, how to communicate in the future, and a modest payment plan for a discounted amount. The real issue was the relationship, and once that was addressed, the monetary terms fell into place quickly. Both parties left smiling.

In November 2014, Sheila Purcell had an opportunity to visit the Hong Kong Department of Justice where she learned of enormous efforts to advance ADR. She invited Venus Cheung of the Hong Kong Department of Justice to share this information.

Under the "One Country, Two Systems" principle enshrined in the Basic Law of the Hong Kong Special Administrative Region (HKSAR), Hong Kong, as a Special Administrative Region of China enjoying a high degree of autonomy, has a common law system which is familiar to the international business and legal community. In fact it is the only common law jurisdiction within China.

The Judiciary and the Legal Profession

The Judiciary of the HKSAR (Judiciary) is well known for its quality, independence and respect for the rule of law. It also has a reputation for supporting arbitration in its rulings and judgments. Hong Kong has a strong legal profession comprising about 9,000 local lawyers and 1,400 foreign lawyers from various jurisdictions. They are experienced in many areas of civil and commercial law such as finance, investment, international trade, maritime matters, intellectual property and commercial contracts.

Promotion of Arbitration and Mediation

It is one of the key policy objectives of the HKSAR Government to actively promote Hong Kong as a leading centre for international legal and dispute resolution services in the Asia Pacific region.

The Department of Justice (DoJ) has set up the cross sector membership Working Group on Mediation (2008 – 2010), Mediation Task Force (2010 – 2012) and the Steering Committee on Mediation (2012 – ongoing) to further promote the more extensive use of mediation.

In December 2014, the DoJ established an advisory committee on the promotion of arbitration in order to strengthen its promotional efforts in and outside Hong Kong.

Arbitration Ordinance (Cap. 609) and Mediation Ordinance (Cap.620)

The current Arbitration Ordinance came into force in June 2011. It is based on the 2006 version of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law and is regularly updated. There is no restriction on who may engage in or advise on proceedings before an arbitral tribunal in Hong Kong. Arbitral awards made in Hong Kong can be enforced in about 150 State parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and in other parts of China through arrangements with the Mainland and Macao for reciprocal enforcement of arbitral awards.

The Mediation Ordinance came into force on 1 January 2013. It provides a legislative framework for the conduct of mediation in Hong Kong, which can safeguard the fundamentals of mediation, such as the protection of confidentiality and admissibility of mediation communications without hampering the flexibility of mediation and its future development.

Arbitration and Mediation Institutions

Apart from the Hong Kong International Arbitration Centre (HKIAC), which was established in 1985, other world class arbitration institutions have set up offices/branch secretariats in Hong Kong in recent years. These include the International Court of Arbitration of the International Chamber of Commerce (2008), the China International Economic and Trade Arbitration Commission (CIETAC) (2012) and the China Maritime Arbitration Commission (2014). In addition, a Host Country Agreement between the Permanent Court of Arbitration ("PCA") and the Central People's Government of China will be signed in the near future. A related Memorandum of Administrative Arrangements between PCA and HKSAR Government will also be signed to secure the provision of facilities and services required for PCA-administered arbitration proceedings in Hong Kong. This will further enhance Hong Kong's role in resolving investment disputes by way of arbitration.

In August 2012, the Law Society of Hong Kong, The Hong Kong Bar Association, HKIAC and the Hong Kong Mediation Centre established the industry-led body – Hong Kong Mediation Accreditation Association Limited (HKMAAL). The HKMAAL was established to discharge accreditation and disciplinary functions for mediators to ensure the quality of mediators.

Support by the Judiciary and other stakeholders

The Judiciary encourages parties to use an alternative dispute resolution procedure (ADR) including mediation to facilitate the settlement of dispute. The Practice Direction 31 on Mediation was first promulgated by the Judiciary on 12 February 2009 and became effective on 1 January 2010 as part of the Civil Justice Reform to facilitate parties to resolve their disputes using mediation. Various pilot schemes on mediation in areas, such as construction, building management, companies, personal injury and family were implemented with satisfactory results. Relevant Practice Directions were issued by the Judiciary at the conclusion of the pilot schemes.

In March 2014, DoJ together with the Judiciary and other stakeholders, held a Mediation Week with a 2-day mediation conference, workshop and seminars to promote the use of mediation within different sectors. An Announcement in Public Interest produced by DoJ was broadcasted on television to enhance the awareness of the public on the understanding of mediation as a means of dispute resolution.



Venus Cheung, Sheila Purcell, & Jenny Fung

More information about ADR practices in Hong Kong can be found at <https://cndr.uchastings.edu/professionals/Hong%20Kong.php>.